

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

MSE TECHNOLOGY APPLICATIONS, INC.

Employer

and

Case 19-RC-13864

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION
NO. 233, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a voting group:
 - Included: All employees employed in the operations branch, including operators and instrument and control technicians, and toolroom attendants employed by the Employer at its Butte, Montana, facility;
 - Excluded: All office clerical employees, guards and supervisors as defined by the Act, and all other employees.

The Employer is engaged in energy research and development related to pollution and pollution cleanup at a facility in Butte, Montana. The Employer also has facilities in other states. Petitioner currently represents a unit of all maintenance employees, including electricians, mechanics, machinists, welders, utility, grounds, and maintenance personnel at the Employer's Butte facility. The petition seeks

an election among approximately 12 operators, five instrument and control technicians (I&C techs, herein), and two toolroom attendants to add them to the existing unit. The Employer contends that the toolroom attendants and I&C techs do not share a community of interest with the operators and/or the existing unit, and should therefore be excluded, and, further, that even if the I&C techs share a community of interest with the operators and/or the existing unit, they are entitled to a separate self-determination election.

The Employer primarily performs tests and evaluation of various cleanup technologies, primarily for the U.S. Department of Energy. The Employer's facility consists of about 53 acres with 15 to 20 buildings. The buildings include the 50-60 building, where most of the operators work, a machine shop, a warehouse building, a stat gas monitoring building, a resource recovery building, two office buildings, a guard house at the entrance, and others buildings. The toolroom attendants work in a trailer complex across the road from the warehouse. Maintenance employees in the existing unit report to a trailer which has a meeting room, breakroom, and showers, and is adjacent to the machine shop. The I&C techs have an I&C shop where they have workstations, tools and equipment, and have a separate breakroom.

The toolroom attendants are Mike Ashton and Carl Murray. They report to Charlie Ries, supervisor of the procurement office, who in turn reports to Dennis Moore, manager of administration. They receive items into the warehouse, store the items, and take periodic inventories. Specialized tools are kept in the toolroom, and Ashton and Murray check them out to other employees on an as needed basis. They also purchase routine items for the warehouse and toolroom. Ashton and Murray earn \$13.00 per hour. They have contacts with employees in the unit when those employees visit the toolroom or perhaps the warehouse to pick up items. They do not have any special training or educational requirements. Ries supervises the procurement office. There are four other employees who report to him: subcontract administrators D. Bowman and B. Firkle, and purchasing agents P. Miller and J. Shrock. Bowman, Firkle, Miller, and Shrock are not sought by Petitioner. They purchase all the goods and services for the Employer. They do not work in the toolroom or the warehouse. No party contends that Bowman, Firkle, Miller, and Shrock should be included in the unit.

The operators and the I&C techs report to Chad Foster, supervisor of the operations branch, who in turn reports to Tom Burkhart, manager of the Employer's operations division. The operators operate the various process systems and equipment in the facility, that is, they turn the valves and push the buttons to run the equipment.

The I&C techs are responsible for the installation of instrumentation and control systems; for calibration and maintenance of instrumentation; for assembly and installation of process systems, programmable logic controllers, and related control equipment; for data gathering; and for troubleshooting. The I&C techs are involved in the initial installation, calibration, and startup of equipment; operators are involved in the startup and running of equipment after installation. There are currently about 1,000 instruments which the I&C techs are required to calibrate and test.

An operator testified that if the equipment is not performing properly, he discusses the symptoms with I&C techs, and they help remedy the problem. He said that he would not be able to run his equipment without such assistance from I&C techs.

Operators are trained on the job. Several of them came to the Employer from the U.S. Navy nuclear propulsion program, and received relevant training there. I&C techs get specialized training and certification through the Instrument Society of America. Certification is not required by the Employer.

In addition to its pollution cleanup related activities, the Employer offers instrumentation and control services, that is, the design and fabrication of control panels for outside customers. The panels are

designed by engineers and fabricated by I&C techs. Bargaining unit electricians are involved to the extent that they do any high voltage work required on the panel. I&C techs are sometimes sent to work at other locations, such as another of the Employer's facilities, or to a mine. Sometimes an electrician accompanies the I&C tech; sometimes an operator goes along. The record does not specify how often each I&C tech travels, or how often an electrician or operator goes along.

I&C techs perform some work, such as computer cable installation, that is also done by electricians. Such work has been the subject of grievances filed by Petitioner. At the time of the hearing, two such grievances were pending.

I&C techs use various hand tools, such as screwdrivers, pliers, diagonals, wire strippers, terminating pliers, connectors, and crimpers, and also carry laptop computers used for communicating with the instruments they deal with. Operators do not use any tools. All employees involved herein work 7:30 am to 4:00 pm five days a week; operators and I&C techs occasionally work overtime. Jack Bugg is the lead for the operators; Scott Holbrook is lead for the I&C techs. There is no contention that either Bugg or Holbrook is a supervisor. There is no interchange between operators and I&C techs. The record establishes that I&C techs have traditionally been treated as a separate group by the Employer.¹

Operators and I&C techs receive wages and benefits similar to those of existing bargaining unit members. Operators and I&C techs receive about \$21.00 per hour.

Conclusion as to I&C techs.

In *Union Carbide Corp.*, 156 NLRB 634 (1966), the Board found instrument repairmen to be a homogeneous group of skilled craftsmen, appropriate for representation in a separate unit. The instrument repairmen were required to calibrate, maintain, and adjust over 7,000 highly sensitive pneumatic and electronic control instruments. They used electronic instruments in diagnosing malfunctions. They received specialized training. They were separately supervised by an instrument repairman foreman. The Board found that the functional and operational integration of the plant did not overcome the factors favoring a separate unit.

In *Mallinckrodt Chemical Works*, 162 NLRB 387 (1966), the Board declined to sever a group of instrument mechanics from an overall production and maintenance unit where the instrument mechanics had been included in the unit for 25 years. The instrument mechanics were separately supervised. They were responsible for the evaluation, installation, modification, calibration, maintenance, and dismantling of electronic, electrical pneumatic, mechanical, and hydraulic instruments. They reported for work in the instrument shop, and spent the greater part of their days working away from the shop. They were required to have prior relevant experience. The Board did find them to be an identifiable group of skilled employees.

In *Marinette Paper Company*, 127 NLRB 1319 (1960), also a severance case, the Board found a group of instrument technicians to constitute an appropriate voting group which might be severed from the overall unit. They had a separate work area in the plant, and were separately supervised. The Employer maintained a two-year apprenticeship program for them. They spent 80 percent of their time maintaining, repairing, installing, and dismantling various instruments and control equipment in the plant, and did not interchange with other employees.

¹ The Employer offered into evidence a statement signed by four of the five I&C techs stating their desire to be treated as a separate group and have a separate election in these proceedings.

Here, there is no bargaining history of inclusion of the I&C techs in any larger unit. Their duties and skills are similar to those of the various instrument employees in the above-cited cases, although, unlike those employees, the I&C techs here are not separately supervised, but are part of the operations department and share supervision with the operators. Their work is functionally integrated with that of the operators to the extent that they install the controls which the operators then use to run the equipment, and they troubleshoot malfunctions of those controls. The operators themselves are not unskilled, inasmuch as they are required to have prior relevant experience, and many of them received their training in the U.S. Navy nuclear propulsion program. Further, the I&C techs share at least some skills with the electricians in the existing unit, as evidenced by the history of jurisdictional conflicts between the two groups. Further, I&C techs share wages, benefits, and hours of work with other employees involved herein, and have frequent contacts with them throughout the work day.

The Board cases cited above suggest that where I&C techs such as those found here have not historically been included in an overall unit, and a labor organization is seeking to represent them separately, that they could constitute an appropriate unit. Here, however, no labor organization is seeking to represent the I&C techs separately. In these circumstances, and in view of their shared supervision and working conditions, frequent contacts, and their functional integration with other employees, I conclude that a voting group which includes the I&C techs along with the operators is appropriate. *Livingston College*, 290 NLRB 304 (1988). In so finding, I note that the circumstances herein with respect to the I&C techs are distinguishable from those of the erection and maintenance employees in *Underwood Machinery Company*, 59 NLRB 42 (1944), cited by the Employer. In that case, there was no existing unit, and the petitioner sought a plant-wide production and maintenance unit. The employer contended that the erection and maintenance employees should be excluded because of their different working conditions. No other labor organization sought to represent the erection and maintenance employees separately. The Board found that such employees could be properly included in a unit with the production employees, but gave them a self-determination election. Here, where Petitioner already represents an existing unit, any election conducted will be a self-determination election, and the I&C techs share sufficient community of interest with the operators to participate in that election in the same voting group with them.

Conclusion as to toolroom attendants.

The toolroom attendants are similar to such employees found in *Brown and Root*, 314 NLRB 19 (1994) to be “plant clericals” and included in the production and maintenance unit. Such employees here work separately from other employees in the procurement department, have frequent contacts with unit employees in that they check out tools to them, and share the same benefits and hours of work. It is well-established that workers who perform clerical duties in close association with the production process and production employees are included in production and maintenance units. Therefore, I shall include the toolroom attendants in the voting group.

Voting group.

The following employees constitute a voting group: All employees employed in the operations branch, including operators and instrument and control technicians, and toolroom attendants, employed by the Employer at its Butte, Montana, facility; but excluding all office clerical employees, guards and supervisors as defined by the Act, and all other employees.

If a majority of the employees in the voting group vote in favor of union representation, their votes will be taken to mean they desire to include in the existing unit of all maintenance employees. In that event, the appropriate unit for collective bargaining shall be:

All maintenance and operations branch employees, including operators and instrument and control technicians, and toolroom attendants, employed by the Employer at its Butte, Montana, facility; but excluding all office clerical employees, guards and supervisors as defined by the Act, and all other employees.

There are approximately 19 employees in the voting group.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the voting group found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the voting group who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 233, AFL-CIO.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 4 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Seattle Regional Office, 2948 Jackson Federal Building, 915 Second Avenue, Seattle, Washington, on or before November 8, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by November 15, 1999.

DATED at Seattle, Washington, this 1st day of November, 1999.

/s/ RAYMOND D. WILLMS

Raymond D. Willms, Acting Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98114

355-2220-2000
440-1760-2460